

ITEM: 09

SUBJECT: The Original Sixteen to One Mine, Inc., Sixteen to One Mine, Sierra County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order (ACLO) for  
Assessment of Mandatory Minimum Penalties*

BACKGROUND: The Original Sixteen to One Mine, Inc. (Discharger) owns and operates the Sixteen to One Mine (Facility), an underground hard rock gold mine in Sierra County. The Facility discharges mine drainage from the 21 Tunnel Portal to Kanaka Creek, which is tributary to the Middle Yuba River, Yuba River, Feather River, and Sacramento River, a water of the United States in the Sacramento Hydrologic Basin.

On 5 February 2015, the Board adopted WDRs R5-2015-0002 (2015 WDRs), which became effective on 16 April 2015 and were modified on 10 September 2015 to clarify the due dates for monitoring reports. The WDRs R5-2015-0002 contain effluent limits for antimony, arsenic, cadmium, copper, iron, lead, manganese, nickel, and electrical conductivity.

The Discharger was not able to immediately comply with the final effluent limitations; therefore, the Board issued Time Schedule Order (TSO) R5-2015-0035 on 17 April 2015. As allowed by the Water Code, the TSO provides protection from mandatory minimum penalties (MMPs) for electrical conductivity, arsenic, antimony, cadmium, copper, iron, lead, manganese, and nickel until 16 April 2020, if the Discharger is in compliance with interim effluent limitations.

On 6 April 2018, the Board amended TSO R5-2015-0035 based on new information provided by the Discharger and adopted TSO R5-2015-0035-01. TSO R5-2015-0035 cited incorrect final effluent limitation from WDRs Order R5-2015-0002. At the time that the Central Valley Water Board adopted TSO R5-2015-0035, the most recent water quality data for the Facility discharge consisted of two sampling events conducted by Central Valley Water Board staff in 2011. Interim limitations were established based on limited dataset. Since adoption of WDRs Order R5-2015-0002 in February 2015, the Discharger had conducted 10 quarterly effluent monitoring events. The amended TSO R5-2015-0035-01 revised the interim effluent limitations to better represent variability of the discharge.

PREVIOUS ENFORCEMENT Between February 2006 and January 2007, the Discharger did not submit twelve monitoring reports as required by WDRs in effect at the time. Failure to submit these monitoring reports resulted in 78 serious violations of Water Code sections 13385 and 13385.1. In February 2015,

the parties entered into a Stipulated Judgment for resolve the outstanding violations for \$237,083 to be paid in monthly installments.

On 21 April 2016, the Board adopted Administrative Civil Liability Order R5-2016-0021 for assessment of MMPs in the amount of \$6,000. This Order resolved two effluent limitation violations for antimony, which occurred from 16 April 2015 to 30 September 2015.

On 8 December 2017, the Board adopted Administrative Civil Liability Order R5-2017-0115 for assessment of MMPs in the amount of \$33,000. This Order resolved one arsenic, two total suspended solids, one cadmium, one iron, four antimony, one nickel, and two copper violations, which occurred from 1 October 2015 to 31 December 2016.

**ADMINISTRATIVE  
CIVIL LIABILITY  
COMPLAINT:**

On 29 March 2019, the Assistant Executive Officer issued Administrative Civil Liability Complaint R5-2019-0506 (Complaint). The Complaint alleges 7 effluent limitation violations from 1 January 2017 through 31 December 2018, 4 of which are allegedly each subject to \$3,000 in MMPs under Water Code section 13385, subdivision (h)(2). The Complaint considers MMP protection provided by the TSO R5-2015-0035 and TSO R5-2015-0035-01, and only alleges MMPs for constituents that have interim effluent limitations in the TSO if the discharge exceeded the interim effluent limitation.

**ISSUES:**

The Discharger's position is that assessing a penalty is not consistent with the intent of the Porter-Cologne Water Quality Control Act (Porter-Cologne), that the Facility is not discharging waste, and that mining districts are the appropriate regulatory authority over mines.

The Prosecution Team submitted a rebuttal with the position that the mandatory minimum penalties proposed are required under the Water Code, they are consistent with Porter-Cologne, the Facility is discharging waste that needs to be regulated by WDRs and a National Pollutant Discharge Elimination System Permit, and the Mining Act of 1866 discussed property rights and is not relevant to the regulation of mines.

**RECOMMEND:**

The Prosecution Team recommends that the Board adopt the Order assessing mandatory minimum penalties in the amount of \$12,000, as proposed.

Mgmt. Review XL  
Legal Review SNL

6/7 June 2019  
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